

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 652 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SIDDHI GASIS PVT. LTD.

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Civil Revision Application No. 652 of 2001
MR PV HATHI for Petitioner No. 1
MR AD OZA for Respondents No. 1-2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2001

ORAL JUDGEMENT

1. Heard the learned advocate Mr.P.V.Hathi, for the petitioner and the learned advocate Mr.A.D.Oza for the respondents. This civil revision application has been

filed being aggrieved by the judgment and order dated 14.3.2001 passed in Misc.Civil Application No.181 of 2000 by the learned Joint District Judge, Bhavnagar rejecting the application for condonation of delay in filing Misc. Appeal from Order against the order dated 31.8.1999 passed on application Exh.5 by the learned 2nd Joint Civil Judge (SD) in Regular Civil Suit No.294 of 1999.

2. The present applicant filed the abovesaid suit against the present respondents for not giving 10% commission to the applicant company in H.T.P.Tariff for the block period of 1990 to 1995. Along with the suit, an application for interim mandatory order was also preferred. The learned 2nd Joint Civil Judge (SD) by his order dated 31.8.1999 rejected the application of the applicant - original plaintiff for interim mandatory injunction, and therefore, the present applicant original plaintiff preferred the Misc. Civil Appeal being aggrieved by the order passed by the learned 2nd Joint Civil Judge (SD) below Exh.5 in Regular Civil Suit No.294 of 1999. However, in preferring an appeal, there was delay of 386 days and hence another Misc.Civil Application No.181 of 2000 came to be filed by the present petitioner for condonation of delay. Mainly, it was contended in the application that the learned advocate, who was in charge of the civil suit, did not inform to the applicant company about passing of the order by the trial court on 31.8.1999 and that the Director Mr.Jagmohanbhai, who was looking after this litigation and legal affairs of the company, was suffering from cancer and died at Bombay on 9.10.1999.

3. After hearing the parties, the learned Joint District Judge, Bhavnagar came to the conclusion that, on the facts on record, it transpired that, Jagmohanbhai was hospitalised on 19.8.1999 and expired on 9.10.1999 and the order passed below Exh.5 by the trial court, against which the appeal was preferred, was passed on 31.8.1999. Thus, in view of the learned Joint District Judge, the appeal was preferred after more than one year after the death of Jagmohanbhai and this period was not explained by the applicant. Secondly, the learned Joint District Judge also came to the conclusion that the plaint and the application was signed by one Manharkumar J.Patel who had preferred the application for condonation of delay and not by Jagmohanbhai, and therefore, contention of the applicant was factually incorrect that Jagmohanbhai as

the Director was looking after the legal affairs of the company and on these two aspects, an application being Misc.Civil Application No.181 of 2000 for condonation of delay of 386 days came to be rejected by the learned Joint District Judge, Bhavnagar on 14.3.2001. Being aggrieved by this order, this revision application is filed by the original plaintiff.

4. The learned advocate Mr.P.V.Hathi drew the attention of this Court to an affidavit filed by Manharkumar J.Patel as per the direction of this Court that in the plaint and the application as well was signed by the deceased Jagmohanbhai as contended by the plaintiff company and not by Manharkumar J.Patel as has been concluded by the learned Joint District Judge, Bhavnagar, and therefore, it was urged that the conclusion arrived at in this respect by the learned Joint District Judge, Bhavnagar was factually incorrect. While the second aspect of delay of one year is concerned, it was argued that, it is not only the death of Jagmohankumar is the cause for causing the delay in filing the appeal, but along with this fact, the learned advocate did not inform about passing of the order is required to be considered, and therefore, it was urged that the learned Joint District Judge failed to consider this aspect of the matter and committed material irregularity in coming to the conclusion.

5. On the otherhand, the learned advocate Mr.Oza for the respondents argued that, this, ultimately, is the suit for obtaining monetary benefits for which on merits interim mandatory order cannot be passed. It was also argued that, there was no explanation from the applicant's side to satisfy the District Court that, how the delay of more than one year caused even after the death of Jagmohanbhai. It was, therefore, urged that the learned Judge rightly rejected the application for condonation of delay. It was also argued that, in these circumstances, the trial court be directed to expedite the suit instead of hearing the appeal and it was urged that the present revision application be dismissed.

6. Having considered the rival contentions from both the sides, principle which is required to be followed is to look into the merits of the case. On perusal of the record, it appears that, not only the case of the monetary benefits as has been contended is the subject matter of dispute, but it is the case that, 10% rebate benefits are given to the similarly situated units by the respondents, while the present plaintiff was denied this benefit. The Board respondent herein is undoubtedly a

State within the meaning of Articles 12 and 14 of the Constitution of India, and therefore, merit more concerns about the discriminatory approach of the respondents than the monetary benefit. At this juncture, therefore, it is very difficult to say that the case of the plaintiff is not meritorious. So far as the condonation of delay is concerned, the second ground i.e. regarding signing of the plaint by the other Director is concerned, an affidavit of Manharkumar J.Patel makes it amply clear that the deceased Jagmohanbhai Director of the plaintiff company was looking after the legal affairs of the plaintiff and the plaint as well as the application for interim injunction was signed by the deceased Jagmohanbhai. In this view of the matter, conclusion arrived at by the learned Joint District Judge that Jagmohanbhai in fact, was not looking after the legal affairs of the company is factually incorrect and not sustainable. So far as the second aspect of filing the appeal late i.e. after one year from the death of Jagmohanbhai is concerned, the learned Joint District Judge ought to have taken into consideration the aspect that it was stated on oath by the applicant that this litigation was looked after by the deceased Jagmohanbhai. He died in Jaslok Hospital on 9.10.1999. Along with this, it is also contended that the learned advocate in charge of the civil suit did not inform about passing of the order below Exh.5 by the trial court to the plaintiff. The present applicant came to know about passing of the order below Exh.5 in Regular Civil Suit No.294 of 1999 on 31.8.1999 only when it was inquired from the advocate on 9.10.2000. Ordinarily, at the first place, nobody thinks about the Court, law and litigation when the death stalks in the family. It appears that in the present unit, all the concerned directors are the brothers. This aspect appears to have been overlooked by the learned Joint District Judge and this fact is required to be appreciated with the fact that, after the death of Jagmohanbhai who was looking after the litigation, on inquiry, the present applicant came to know about the passing of the order on 9.10.2000 only. There is nothing on record to disbelieve this aspect of the matter. Appreciating both the circumstances together, delay caused for about more than one year after the death of Jagmohanbhai was required to be condoned by the learned Joint District Judge and since the learned Joint District Judge did not take this aspect into consideration, order impugned is required to be interfered with.

7. In this view of the matter, this revision application is allowed. Order impugned passed by the

learned Joint District Judge, Bhavnagar on 14.3.2001 below Misc. Civil Application No.181 of 2000 is set aside. Misc. Civil Application No.181 of 2001 stands allowed. Delay of 386 days in filing the Misc.Civil Application is condoned. The learned District Judge is directed to register the Misc.Civil Appeal and dispose of the same within two months from the date of the receipt of the writ of this Court. Office is directed to issue writ immediately. Rule is made absolute.

(J.R.Vora, J)
(pathan)